Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

MEMORANDUM

Date: October 1, 2012

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Project Manager RC
Erika Schwender, Acting BDD Facility Manager

Subject: Contract Amendment to Professional Services Agreement Between the BDD Board and Harwood Consulting, LLP for Specialized Services Relating to the Middle Rio Grande Collaborative Program in the Amount of $24,000 (Exclusive of NMGRT)

This contract amendment is to provide additional funds for an existing contract that the BDD Board has entered into with Harwood Consulting, LLP for Specialized Services Relating to the Middle Rio Grande Collaborative Program in the Amount of $24,000.

This scope of work supports BDD Project staff review and analysis of the Middle Rio Grande Biological Assessment, Biological Opinion and related documents as it relates to the BDD Project's environmental approvals. The tasks include meetings with non-federal stakeholders in the Rio Grande system (including the NM Interstate Stream Commission and New Mexico Attorney General's Office), analysis and input to program documents and coordination with BDD Project partners. These funds are for a moderate level of effort, in coordination with BDD Project staff, to minimize costs and support staff efforts regarding these permits. These funds should cover the aforementioned level of work through the Spring of 2013. In the event of possible litigation or BDD Project permit re-initiation, then additional resources may be needed

RECOMMENDATION
Staff recommends approval of this contract amendment in the amount of $24,000 (excluding NMGRT).

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☐ or CONTRACT AMENDMENT ☑

2 Name of Contractor Harwood Consulting PC

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $20,000.00

Termination Date: December 31, 2012

☐ Approved by BDDB Date: _____

☑ or by Project Manager Date: 8/29/11

Contract is for: Prof. Srv

Amendment # 2 to the Original Contract# 11-0940

Increase/(Decrease) Amount $ 24000

Extend Termination Date to: June 30, 2013

☐ Approved by BDDB Date: _____

☑ or by Project Manager Date: pending

Amendment is for: increase comp and term

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4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☑ Plus GRT ☐ Inclusive of GRT

Amount $ 20,000.00 of original Contract# 11-0940 Termination Date: 12/31/2012
Reason: professional services

Amount $ 27,000.00 amendment # 1 Termination Date: na
Reason: comp increase

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: $ 71,000

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☑ _____ Date: August 22, 2011

Other _____

6 **Procurement History:** _____
example: (First year of 4 year contract)

7 **Funding Source:** _____ **BU/Line Item:** 7280000

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

m

DRAFT

BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 2 TO
PROFESSIONAL SERVICES AGREEMENT

AMENDMENT No. 2 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated August 29, 2011 (the "Agreement"), between the Buckman Direct Diversion Board (the "BDDB") and Harwood Consulting, PC._(the "Contractor"). The date of this Amendment shall be the date when it is executed by the BDDB.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide professional services BDDB.

B. Pursuant to Article 17 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDB and the Contractor agree as follows:

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of twenty seven thousand dollars ($24,000) plus gross receipts tax, so that Article 3, paragraph A reads in its entirety as follows:

A. The BDDB shall pay to the Contractor in full payment for services rendered a sum up to and not to exceed seventy one thousand dollars ($71,000), plus applicable gross receipts taxes. Payment shall be made for services actually rendered at an hourly rate of one hundred seventy five dollars ($175.00) per hour.

DRAFT

2. TERM.

Article 5 of the Agreement is amended to extend the term of the Agreement, so that Article 5 reads in its entirety as follows:

This Agreement shall terminate on June 30, 2013, unless terminated pursuant to Paragraph 6, infra.

3. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.2 to the Professional Services Agreement as of the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
BDDB Chairperson
Date: _____

CONTRACTOR:

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

_____
Nancy R. Long, BDDB Counsel

APPROVED:

_____
Dr. Melville Morgan, City Finance Director

ATTEST:

_____
Yolanda Y. Vigil, City Clerk
File Date: _____

728000
Business Unit/Line Item

ITEM # 12-0033

BUCKMAN DIRECT DIVERSION BOARD
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
WITH HARWOOD CONSULTING, P.C.

This AMENDMENT No. 1 (the "Amendment") to the PROFESSIONAL SERVICES AGREEMENT, dated August 29, 2011 (the "Agreement"), between the Buckman Direct Diversion Board (the "BDDB") and Harwood Consulting, PC.(the "Contractor") shall be the date when it is executed by the BDD Facilities Manager.

RECITALS

A. Under the terms of the Agreement, Contractor has agreed to provide professional services to the BDDB.

B. Pursuant to Article 17 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the BDDB and the Contractor agree as follows:

Amendment #1

1. COMPENSATION.

Article 3, paragraph A of the Agreement is amended to increase the amount of compensation by a total of twenty seven thousand dollars ($27,000) plus gross receipts tax, so that Article 3, paragraph A reads in its entirety as follows:

original PSA + Amend #1 TOTAL

A. The BDDB shall pay to the Contractor in full payment for services rendered a sum up to and not to exceed forty seven thousand dollars ($47,000), plus applicable gross receipts taxes. Payment shall be made for services actually rendered at an hourly rate of one hundred seventy five dollars ($175.00) per hour.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No.1 to the Professional Services Agreement as of the dates set forth below.

BUCKMAN DIRECT DIVERSION BOARD

By: _____
Robert J. Mulvey,
BDD Facilities Manager

Date: 1-17-2012

CONTRACTOR:

By: _____
Name: Kyle C. Hand
Title: Owner

Date: 2012 01 06

CRS# 03-101047-00-4

APPROVED AS TO FORM:

Nancy R. Long
Nancy R. Long, BDDB Counsel

APPROVED:

Melville L. Morgan 1/18/12
Dr. Melville L. Morgan, City Finance Director

728000
Business Unit/Line Item

ATTEST:

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk rmc
File Date: 1-20-12

ITEM # 11-0940

BUCKMAN DIRECT DIVERSION BOARD

PROFESSIONAL SERVICES AGREEMENT
WITH
Harwood Consulting, PC

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDB") and Harwood Consulting, PC. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the Chair of the Board.

1. SCOPE OF SERVICES

The contractor shall provide Professional Services for the BDDB:

A. Review, analysis and evaluation of the 2011 Rio Grande Silvery Minnow NEPA compliance documents as they relate to the Buckman Direct Diversion project and permit approvals. Assessment of regulatory and legal issues triggered by these (2011) documents and related documents, including an assessment of BDD Project coverage under existing permits and possible scenarios for re-initiation.

B. Preparation of comments in response to federal agency deadlines regarding these documents;

C. Attendance with BDD Project staff at meetings with state and federal agency officials, preparation of presentation materials to City and County Staff, and the preparation of recommendations;

D. Other tasks as assigned, relating to the NEPA issues described above.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor

Req # 20126345

shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The BDDB shall pay to the Contractor in full payment for services rendered a sum up to and not to exceed twenty thousand dollars ($20,000), plus applicable gross receipts taxes. Payment shall be made for services actually rendered at an hourly rate of one hundred seventy five dollars ($175.00) per hour.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Invoices for services will be made on a monthly basis. Payment to the Contractor will be made within thirty (30) days after the date of billing. Billing will be made in accordance with the tasks described in the attached Scope of Services and shall be paid only for services actually performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDB to the Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB and terminate December 31, 2012.

TERMINATION

A. This Agreement may be terminated by the Board upon 30 days written notice to the Contractor. In the event of such termination:

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Board original copies of all work product, research or papers prepared under this Agreement.

(2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination. If full payment has been made, Contractor agrees to prorate for work accomplished and refund all amounts earned.

6. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the Board and are not employees of the Board. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding use of Board vehicles, or any other benefits afforded to employees of the Board as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

7. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Board.

8. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

9. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the Board. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Board.

10. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Board, the City of Santa Fe, The County of Santa Fe and Las Campanas, L.P., their

officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, the Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. The Contractor agrees not to purport to bind the Board to any obligation not assumed herein by the Board unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

11. INSURANCE

A. The Contractor shall not begin the Professional Services required under this Agreement until it has: (i) obtained, and upon the Board's request provided to the Board, insurance certificates reflecting evidence of all insurance required herein; however, the Board reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by the Board; (ii) obtained Board approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by the Board.

B. Further, the Contractor shall not modify any policy or endorsement thereto which increases the Board's exposure to loss for the duration of this Agreement.

C. **Types of Insurance.** At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

(1) **Commercial General Liability.** Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate(other than Products/Completed Operation)	$1,000,000
Products/Completed Operations Aggregate Limit	$1,000,000
Personal Injury Limit	$1,000,000
Each Occurrence	$1,000.000

(2) **Automobile Liability.** For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than $1 million per accident. An insurance certificate shall be submitted to the Board that reflects coverage for any automobile [any auto].

(3) **Professional Liability.** For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than $1,000,000 per claim and $1,000,000 annual aggregate. The Contractor shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a

period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

(4) **Workers' Compensation.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	$500,000	Each Accident
Bodily Injury by Disease	$500,000	Each Employee
Bodily Injury by Disease	$500,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against the Board, City of Santa Fe, County of Santa Fe, Las Campanas LLC and their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation.** Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the Board is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event the Contractor's insurance carriers will not agree to this notice requirement, the Contractor

will provide written notice to the BDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the Board. The Board will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

G. **Specific Provisions Required.**

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the Board, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LP and their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the Board.

(a) The Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the Board's exposure to loss.

(b) Before performing any Professional Services, the Contractor shall provide the Board with all Certificates of Insurance accompanied with all endorsements.

(c) The Board reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the Board. The Board will reimburse the Contractor for the cost of the additional premium for any coverage requested by the Board in excess of that required by this Agreement without overhead, profit, or any other markup.

(d) The Contractor may obtain additional insurance not required by this Agreement.

12. INDEMNIFICATION

General Indemnification. To the greatest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Board, City of Santa Fe, County of Santa Fe, Las Campanas, LLC and their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from the Contractors performance or non-performance under this Agreement as well as the performance or non-performance of the Contractor's employees, agents, representatives and subcontractors or any tier.

Indemnification for Professional Acts, Errors or Omissions. Except for professional acts, error or omissions that are the result of established gross negligence or willful misconduct on the part of the Contractor, or its employees, agents, representatives or sub-consultants, the General Indemnification shall not apply to professional acts, errors or omissions unless covered by Professional Liability insurance required in this Agreement.

13. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do no waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

14. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Board and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

15. RECORDS, DOCUMENT CONTROL AND AUDIT

A. The Contractor shall conform with and participate in the Document Control policies of the Board or the City of Santa Fe. The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by the City of Santa Fe, the Department of Finance and Administration, the State Auditor. The Board and the City of Santa Fe shall have the right to audit the billing both before and after payment to the Contractor. Payment under this Agreement shall not foreclose the right of the Board or the City of Santa Fe to recover excessive or illegal payments.

16. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Board. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

17. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

18. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

19. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

20. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

21. NOTICES

Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

BOARD:
Robert Mulvey
Buckman Direct Diversion
801 San Mateo
Santa Fe, NM 87504

With a copy to: Nancy R. Long, Esq.
BDDB Independent Counsel
Long, Pound & Komer, P.A.
2200 Brothers Road
P. O. Box 5098
Santa Fe, NM 87502-5098

CONTRACTOR: Harwood Consulting, PC
1660 A Old Pecos Trail
Santa Fe, NM 87505

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as o the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

By: _____
BDD Facilities Manager

Date: 8/29/2011

CONTRACTOR:
*

By: _____
Name: Kyle S Harwood
Title: Owner
Date: 2011 08 31

NM Taxation & Revenue
CRS # 03-101047-004
City of Santa Fe Business
Registration # 11-00048042

APPROVED AS TO FORM:

_____
Nancy R. Long, BDDB Counsel

APPROVED:

_____
City Finance Director

7280000.72410.510300
Business Unit/Line Item

ATTEST:

_____
Yolanda Y. Vigil, City Clerk
File Date: 9-1-11

11/2/11 #268635
Per Engr Manual change to 510300
72410

Buckman Direct Diversion Project

A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.

MEMORANDUM

TO: **Robert Rodarte, Procurement Manager**

FROM: **Rick Carpenter, Buckman Direct Diversion Project Manager** RC

SUBJECT: **Sole Source Justification**

DATE: **August 23,2011**

On August 18, 2011 the federal Bureau of Reclamation released its draft Biological Assessment on *Non-Federal Water Management Actions on the Middle Rio Grande, New Mexico.* This document will have significant implications for future operations and functionality of the Buckman Direct Diversion and perhaps other aspects of the Santa Fe water supply portfolio. There are many complexities, sensitivities, and nuances associated with this issue, as well as, some very short time-lines for initial deliverables. Staff is recommending a sole source agreement with Kyle Harwood to help provide essential profession services related to the above. Staff feels a that sole source award to Harwood Consulting is justified for the following reasons:

1) Mr. Harwood has a complete understanding of complexities and nuances of the overall context within which the BDD Project exists – and therefore has a uniquely comprehensive skill-set for the purposes of addressing the work effort summarized above.
2) Mr. Harwood has a comprehensive institutional knowledge, experience, and historical involvement in the specifics, legal and otherwise, of BDD NEPA compliance as a discrete issue.
3) The initial schedule for deliverables, as mandated by the federal government, allow only a 4-week time frame in which of provide written comments to the federal agencies – this requires professional services that can be implemented immediately and without the delay that would be part of a competitive proposal process.

Approved: _____

Robert Rodarte, Procurement Manager

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☑ or CONTRACT AMENDMENT ☐

2 Name of Contractor Harwood Consulting PC

3 Complete information requested ☑ Plus GRT ☐ Inclusive of GRT

Original Contract Amount: $20,000.00

Termination Date: December 31, 2012

☐ Approved by BDDB Date: _____

☑ or by Project Manager Date: Pending

Contract is for: Prof. Srv

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by BDDB Date: _____

☐ or by Project Manager Date: _____

Amendment is for:

---

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☐ Inclusive of GRT

Amount $ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ 20,000

Buckman Direct Diversion Board
Summary of Contracts, Agreements, & Amendments

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☑ _____ Date: August 22, 2011

Other _____

6 **Procurement History:** _____
example: (First year of 4 year contract)

7 **Funding Source:** _____ **BU/Line Item:** 7280000

8 **Any out-of-the ordinary or unusual issues or concerns:**
none
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Maya Martinez

Phone # 955-4271

10 **Certificate of Insurance attached.** (if original Contract) ☐

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # 11-0940

Date of contract Executed (i.e., signed by all parties): 9/1/11

Note: If further information needs to be included, attach a separate memo.

Comments:

m

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/1/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Daniels Insurance, Inc.-Santa Fe
805 St. Michaels Drive

Santa Fe NM 87505

CONTACT NAME: Melanie Morais
PHONE (A/C, No, Ext): (505) 982-4302 FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Cincinnati Specialty Underwriter	13037
INSURER B: Hartford Casualty Insurance Comp	29424
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Harwood Consulting, PC

1660 A Old Pecos Trail

Santa Fe NM 87505

COVERAGES **CERTIFICATE NUMBER:** Cert ID 9951 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY							
B	X COMMERCIAL GENERAL LIABILITY			34SBAVR2943	7/3/2011	7/3/2012	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
							GENERAL AGGREGATE	$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 4,000,000
	POLICY PRO-JECT X LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Lawyers Professional			CSU0029003	7/3/2011	7/3/2012	$2,500 Ded	$ 1,000,000
								$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
All operations of the insured per policy conditions. Liability: Continental United States

CERTIFICATE HOLDER

City of Santa Fe

P.O. Box 909

Santa Fe NM 87504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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City of Santa Fe, New Mexico

BUSINESS LICENSE

City Of Santa Fe
PO BOX 909
Santa Fe NM, 87504

Official Document
Please Post

Business Name: **HARWOOD CONSULTING**

Location: **1660 OLD PECOS TRL**

Class: **BUSINESS REGISTRATION - STANDARD**

Comment:

Control Number: 0051989

License Number: 11-00048042

Issue Date August 24, 2011

Expiration Date December 31, 2011

HARWOOD CONSULTING
1660 OLD PECOS TRL #A

SANTA FE NM 87505

CITY CLERK'S OFFICE
DOCUMENTS REQUIRING CITY CLERK'S SIGNATURE

DATE: 8/31/11
SUBMITTED BY: Stephanie Longley Ext: 4233
DOCUMENT TYPE: Paul Kyle Harwood - BDAB

ATTACHMENTS

ATTACHED	N/A	
☐	☑	Exhibits
☑	☐	Certificate of Insurance
☐	☑	Waiver of Insurance
☑	☐	Contract Summary

REQUIRED SIGNATURES

- ☐ Mayor
- ☐ City Manager
- ☐ City Attorney
- ☑ Finance Director
  - ☑ Business Unit and Line Item
- ☑ Contractor
  - ☑ CRS Number
  - ☑ Business Registration Number

COMMENTS:

RECEIVED BY CITY CLERK'S OFFICE tyd DATE: 9-1-11